

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
VYTAUTAS VEBELIUNAS, :
:
Plaintiff, : 99-CV-2328 (CBA)
:
September 13, 2000
:
V. : Brooklyn, New York
:
UNITED STATES OF AMERICA, :
:
Defendant. :
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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE CAROL B. AMON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: VYTAUTAS VEBELIUNAS, PRO SE

For the Defendant: GORDON MEHLER, ESQ.
THOMAS McFARLAND, ESQ.

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Proceedings recorded by electronic sound recording,
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1 THE CLERK: Vebeliunas versus United States
2 of America.

3 Note your appearances for the record.

4 MR. MEHLER: Gordon Mehler and Tom McFarland
5 for the government.

6 MR. VEBELIUNAS: Vytautas Vebeliunas, pro
7 se.

8 THE COURT: Basically, I had set this down
9 -- I had issued a memorandum and order. In that
10 memorandum and order -- that was pursuant to the
11 petitioner's request for relief under 2255. I denied
12 that relief but I did direct the Probation Department,
13 since I guess it's obviously a condition of Mr.
14 Vebeliunas's supervised release that he make the
15 requisite payments, that they provide me with whatever
16 information they had to the status of the restitution
17 payments and to look into the claim that the NCUA was
18 compensated for the losses. I got a report from them.

19 But, Mr. Mehler, I had understood someone
20 from Probation would obviously be here with respect to
21 this application.

22 MR. MEHLER: Well, your Honor, I really
23 learned about it only through the Court's order. I
24 didn't receive Mr. Vebeliunas's papers because I guess
25 he sent them to Brooklyn again instead of to

1 Washington. But I did speak to Ms. Divine (ph) and she
2 in fact faxed me the papers, which I read this morning.
3 She indicated to me that she was going to be out of the
4 country.

5 THE COURT: Did she understand, though, that
6 she should have been here for this proceeding?

7 MR. MEHLER: I don't know what the -- I
8 didn't have any discussion with her on that matter.

9 THE COURT: Whether he is complying with the
10 conditions of supervised release is basically the issue
11 that gives me the basis to bring people in at this
12 point to discuss this.

13 MR. MEHLER: Sure. I can tell you what she
14 wrote to me. I'm sure it's not confidential. When she
15 faxed me Mr. Vebeliunas's papers, to sort of bring me
16 up to date, she said Mr. Vebeliunas is still saying
17 that the \$800,000 should be credited toward
18 restitution. The hearing is set for 9/13. I will be
19 out of the country and will not be at the hearing.
20 Note his recent memo makes reference to travel
21 restrictions. I got his case in April of this year and
22 since then he has not been denied any request to travel
23 for business. I even allowed him an overnight trip to
24 see his son in New Jersey.

25 He signed attached payment agreement, which

1 he did fax to me, saying he'd pay \$500 a month
2 restitution as of July, 2000. He paid on 7/11 and 9/6
3 but skipped August. If he's too poor to pay
4 restitution, then no travel for pleasure. He obviously
5 can't afford it. Some of the expenses he reports are
6 unnecessary anyhow, including \$600 for "Easter"
7 expenses in April and \$1,000 as a wedding gift to a son
8 in May, \$750 for office help in June, \$491 for office
9 help in July, which should be business expenses. I
10 believe that's her memo to me.

11 THE COURT: Was that memo given to Mr.
12 Vebeliunas?

13 MR. MEHLER: I read it but I'll be happy to
14 give him a copy of it if he wants it.

15 THE COURT: Mr. Vebeliunas, have you made an
16 arrangement with the probation officer to pay the
17 outstanding restitution?

18 MR. VEBELIUNAS: Your Honor, she directed me
19 to pay \$500 a month, so I pay that for July and I paid
20 it also for August, but I guess it arrived in
21 September. She also agreed that if I can show that
22 there are no funds to pay, then I have to prove that
23 and I don't have to pay that. The issue between Ms.
24 Divine, who is the probation officer, and myself is
25 that she is counting my Social Security as part of the

1 restitution.

2 THE COURT: You mean as part of your income.

3 MR. VEBELIUNAS: As part of my income. I
4 was under the impression that Social Security was not
5 subject for payment. At this time, by paying the \$500,
6 I usually run deficit, where my son then subsidized me,
7 and of course that all goes from my Social Security
8 because my gross income is only \$400 a week, which out
9 of that I have to still keep the office going. So I
10 would like if your Honor could advise if my Social
11 Security really is subject to this restitution payment
12 or not.

13 THE COURT: Does the government have a
14 position? I don't know why it wouldn't be but I don't
15 know the answer.

16 MR. McFARLAND: Your Honor, we are forbidden
17 by law from trying to execute on Social Security
18 benefits and public assistance and other types of
19 benefits.

20 THE COURT: Right.

21 MR. McFARLAND: However, in figuring out
22 what somebody can afford to pay, any income, public
23 assistance, Social Security, stocks, bonds, dividends,
24 that sort of thing --

25 THE COURT: What is your position in this

1 case now? You have the case?

2 MR. McFARLAND: I'm the collection man for
3 this.

4 THE COURT: For the restitution order?

5 MR. McFARLAND: Yes, for the U.S.
6 attorney's --

7 THE COURT: Did you have some part in this
8 \$500 determination?

9 MR. McFARLAND: We were not privy to that.
10 Very often the Probation Department will make such
11 agreements and unless we have serious objections, which
12 we did not in this case, and people comply with the
13 payment plan, then that's fine with us. The \$500 a
14 month was acceptable under the circumstances, from my
15 office's standpoint.

16 THE COURT: I take it you are paying the
17 \$500 a month.

18 MR. VEBELIUNAS: Yes, I am paying that but
19 that gets me into deficit and I have to ask my family
20 to support it. That exhausts all my Social Security
21 check plus my son has to subsidize me.

22 THE COURT: What is the situation -- Mr.
23 McFarland, you can advise the Court on this. There are
24 several different financial obligations that Mr.
25 Vebeliunas has as a result of the judgment. One is the

1 fine.

2 MR. McFARLAND: That's right.

3 THE COURT: And the other is the restitution
4 and the special assessment. In what order does the
5 government collect those?

6 MR. McFARLAND: The statute requires that it
7 be the special assessment, then restitution, then fine.
8 So the fine is in the back and as far as I know, the
9 special assessment has been satisfied. Any payments
10 that we receive are being applied to the restitution
11 judgment and will be forwarded on to the victims by the
12 Justice Department.

13 THE COURT: So at this point in time the
14 special assessment has been satisfied.

15 MR. McFARLAND: To the best of my knowledge,
16 yes.

17 THE COURT: And you're collecting payments
18 against the restitution order.

19 MR. McFARLAND: The restitution, right.

20 THE COURT: How long do you do that? I take
21 it your jurisdiction isn't limited to the period of
22 supervised release.

23 MR. McFARLAND: That's correct, your Honor.
24 The judgment is good for twenty years and it may be
25 renewed for another twenty years, if that seems

1 appropriate.

2 THE COURT: This is in terms of collecting
3 on the restitution order.

4 MR. McFARLAND: That's correct.

5 THE COURT: One issue that was raised -- Mr.
6 Mehler, maybe you're the best person to answer this.
7 It was never particularly crystal clear to me. What
8 Mr. Vebeliunas contends is that the restitution order
9 has in effect been satisfied. The restitution order in
10 this case was a very specific restitution order. It
11 pertained to the Club Regency and indeed it pertained
12 to several loans in connection with the Club Regency.
13 It was like \$450,000. Then there was \$124,000 --
14 actually, the restitution order wasn't just Club
15 Regency. It was also a different loan.

16 MR. McFARLAND: WTI.

17 THE COURT: I think we can agree that the
18 WTI had nothing to do with the bankruptcy; is that
19 correct?

20 MR. MEHLER: I think that's right. The Club
21 Regency involved eight separate loans and the other one
22 was a --

23 THE COURT: Mr. Vebeliunas, I take it you
24 agree to that. Your statement here has been that the
25 \$800,000 settlement agreement in the bankruptcy -- that

1 pertained to Club Regency, correct?

2 MR. VEBELIUNAS: Yes, your Honor.

3 THE COURT: That did not pertain to the WTI,
4 the other --

5 MR. VEBELIUNAS: That's correct. I'd just
6 like to comment on the probation officer's report which
7 I just got now. I did not tell her that the \$800,000
8 should be credited against it. My position was that
9 the entire mortgage, which was good, should have been
10 credited to the restitution because the government
11 presented that there was no mortgage or mortgage was
12 worthless, while six years after that I didn't know
13 what (ui) had, but I knew that the mortgage was good
14 and was so stated under oath by NCUA. Your Honor
15 yourself said that it's not the amount of collection
16 but the amount of good collateral should be applied
17 against the losses.

18 THE COURT: I take it, Mr. Mehler, you don't
19 argue with the position that the government can't
20 recover twice for the same amount. The question is
21 whether -- it was the bankruptcy of Lidas (ph),
22 correct?

23 MR. MEHLER: Lidas.

24 THE COURT: In the bankruptcy proceeding,
25 based I guess on a mortgage, the government recovered

1 or NCUA recovered \$800,000.

2 MR. MEHLER: I don't believe that's
3 completely accurate. As I understand the papers here,
4 this was an adversary action commenced for a number of
5 things, not just limited to what we're talking about,
6 all sorts of claims that the NCUA had for over two
7 million dollars. They settled it, it's true, for
8 \$800,000. But similar to what happened when Mr. Stolz
9 stood here at the sentencing, there was a compromise,
10 there was a settlement.

11 The issues that we're dealing with here were
12 never litigated and they weren't litigated because Mr.
13 Vebeliunas and his lawyer at the time made a tactical
14 decision that in order to get a better sentence and
15 avoid protracted proceedings on extremely complicated
16 financial matters, that one point would be deducted
17 from the guidelines --

18 THE COURT: Mr. Mehler, I'm not going back
19 to the original sentence or anything that has been
20 addressed with respect to the 2255. I'm persuaded that
21 at the time the sentence was accurate based on the
22 information before the Court. The only question that I
23 have now is whether, because of subsequent proceedings,
24 a restitution order that this Court entered -- the
25 Court entered a specific restitution order with respect

1 to very specific loans because you have to do that. In
2 other words, it has to be based on the count of
3 conviction.

4 MR. MEHLER: Right.

5 THE COURT: So the only question is, apart
6 from what happened in the past, that is the only
7 restitution that the defendant or petitioner, if you
8 will, was required to pay by this Court.

9 MR. MEHLER: Right.

10 THE COURT: If for whatever reason that
11 restitution order, in other words the money that was
12 owed on those particular loans has been paid, then I
13 think that may be an issue going forward as to whether
14 now Mr. Vebeliunas should still have to pay that
15 restitution order, if in fact it was paid in another
16 manner. That seems to be the only issue that I'm
17 interested in addressing now. I have ruled on the
18 other issues and I'm not -- I didn't make any finding
19 that someone wasn't candid at the time.

20 Obviously, there was back and forth on the
21 sentencing, as you pointed out. There was a certain
22 compromise in terms of not proceeding with a Fatico
23 hearing, et cetera. That's not my concern. I'm not
24 going back. We're not redoing history. However, if
25 there is a restitution order that is outstanding

1 against Mr. Vebeliunas that has in fact been paid in
2 some format, I think that is something, in terms of the
3 conditions of his supervised release, et cetera, that
4 has to be dealt with.

5 The only information I have that anything
6 has been paid that Mr. Vebeliunas has put before this
7 Court deals with his bankruptcy. One thing that
8 appears apparent to me is this bankruptcy did not deal
9 at all with that portion of the Court's restitution
10 order that dealt with the WTI loan. In other words,
11 that was not address. So nothing has been raised to
12 suggest that that portion of the Court's order, which I
13 think was \$90,364, is at issue.

14 MR. MEHLER: Right.

15 THE COURT: So as I understand it, that
16 bankruptcy doesn't raise that issue. The other issue
17 is \$124,000 was paid to the Cumus (ph) Mutual Insurance
18 Company.

19 MR. MEHLER: I think that's a little bit of
20 a diversion because this is just the way the money was
21 split. The total restitution was \$581,000 and I think
22 that's the figure we should focus on and then subtract
23 \$90,000. The way that money is divided is --

24 THE COURT: It depends on whether that's a
25 loss that's never been compensated.

1 MR. MEHLER: You mean because it goes to an
2 insurance company as opposed to the NCUA.

3 THE COURT: Right, so that may be an issue.
4 The question is if the NCUA has already been paid for a
5 substantial portion of this, then that's something that
6 I think it probably at this point may be legitimate to
7 talk about in terms of what the ultimate restitution
8 order is. I'm not sure how it affects Mr. Vebeliunas's
9 \$500 payments because under any stretch, he's still
10 liable for \$90,000 and there's a \$60,000 fine. So
11 there's still a lot of money that in my view is
12 uncontested.

13 MR. MEHLER: To say nothing of the \$124,000
14 that goes to this insurance company.

15 THE COURT: I think so but I'm not real
16 sure. Somebody would have to point that out.

17 MR. McFARLAND: One thing about the
18 adversary, as I understand, your Honor -- I have not
19 seen the complaint but my understanding from speaking
20 to the NCUA is that it covered a much larger universe -
21 -

22 THE COURT: But nobody has told me that. I
23 don't know that. Would it be helpful for somebody
24 maybe to explain that to me?

25 MR. VEBELIUNAS: May I, your Honor?

1 MR. MEHLER: Your Honor, the difficulty is
2 this. You asked a question before, which is does the
3 government take the position that somebody should have
4 to pay restitution twice? I think as a matter of
5 equity, as a matter of fairness, apart from all the
6 legalisms --

7 THE COURT: I hope the answer to this is no.

8 MR. MEHLER: Is no, fine. However, Judge,
9 that doesn't end the matter because the problem here is
10 and has always been that it is murky and it is
11 difficult to know, even after communicating with the
12 NCUA people, exactly what happened. For example, Mr.
13 Vebeliunas hinges a lot of his arguments on a
14 contradiction between Mr. Julian Friedman, who
15 testified that the collateral was worthless, and
16 another lawyer named John Consenz (ph), who said in an
17 affidavit that the mortgages were not worthless.

18 THE COURT: But what happened in the
19 bankruptcy? Did they recover that money because the
20 mortgages turned out to be good?

21 MR. MEHLER: No. As I understand it --

22 THE COURT: Where did the \$800,000 come
23 from?

24 MR. MEHLER: As I understand it, the
25 adversary proceeding was not based on the existence of

1 the mortgage, which according to Mr. Friedman was
2 extinguished by the Naples Federal Savings and Loan
3 foreclosure action, but the adversary proceeding was
4 based on his general conduct.

5 THE COURT: Where did the money come from?
6 In other words, the NCUA got \$800,000. Did they get
7 that because they were able to collect on some
8 mortgage?

9 MR. MEHLER: They sold Club Regency, as I
10 understand it.

11 MR. VEBELIUNAS: May I explain because I
12 know the details very well, your Honor.

13 THE COURT: Okay.

14 MR. VEBELIUNAS: Mr. Mehler was not in the
15 court. He did not go to the bankruptcy proceeding.
16 The money came from the sale of the Club Regency, which
17 sale took place at the beginning of the bankruptcy.
18 The proceeds of the sale was about 3.3 million dollars.
19 Mr. Levitt (ph), who was a secured creditor, did
20 receive 1.3 million, leaving 2 million dollars for the
21 trustee.

22 THE COURT: So the money came as a result of
23 the sale.

24 MR. VEBELIUNAS: Yes, your Honor. The
25 adversary proceeding -- the NCUA were not a secured

1 creditor at that time but they revived the mortgage and
2 that's the only reason they had standing to go for the
3 money. Otherwise, in the bankruptcy court, if you are
4 an unsecured creditor, first you have to satisfy the
5 mortgages. But they revived the mortgage, they changed
6 their position and they collected the money.

7 Why they agreed to \$800,000, because they
8 could not prove more owing than that amount and that's
9 all in the bankruptcy court records. I see the
10 gentleman did not bother to read it and only
11 opinionating about it. If this is a court, I can make
12 copies of all these proceedings.

13 THE COURT: Is it correct then that what
14 happened was the NCUA was in there because they had
15 standing as a result of the mortgage?

16 MR. MEHLER: I don't know, Judge. I don't
17 know the answer to that question.

18 MR. VEBELIUNAS: I do, because in bankruptcy
19 court, you cannot -- the trustee is very jealous of
20 this money and he doesn't give any money unless you can
21 prove you are a secured creditor. I know that Mr.
22 Mehler doesn't know it but that's the only way they
23 could have collected the money. There was no other
24 issue and the records show that.

25 THE COURT: If they have collected, Mr.

1 Mehler, a certain amount -- if NCUA has collected money
2 from the bankruptcy of Lidas -- that was Mr.
3 Vebeliunas's company. If they have collected that
4 money and the money related to the Club Regency loans
5 and the restitution was specifically the Club Regency
6 loans, how can they collect it again?

7 MR. MEHLER: How do we know what the
8 collection related to? You say it related to Club
9 Regency. The
10 NCUA --

11 THE COURT: Can you enlighten the Court on
12 that because this is what Mr. Vebeliunas's position is.
13 The problem is I guess, Mr. Mehler, that I don't know.

14 MR. MEHLER: The problem that I have had
15 throughout this, although I have made attempts to find
16 out

17 -- for example, Mr. Consenz is no longer around. He's
18 a contract employee who came in, didn't have a lot of
19 sort of capital in this and left. He made some
20 statement which the Court pointed to in its opinion --
21 maybe he made a mistake, maybe the situation changed.

22 The problem is that we don't know and I
23 still don't know exactly what the NCUA's claims related
24 to. We know they generally related to Club Regency but
25 I can't say that the derelictions, the damage to the

1 NCUA that caused them to take a two-million-dollar
2 claim and settled it for \$800,000 related to precisely
3 the same harms that the restitution was meant to
4 address.

5 MR. VEBELIUNAS: Correction, Mr. Mehler.
6 The NCUA claim was only \$1,250,000.

7 MR. MEHLER: The adversary action, according
8 to Mr. Meltzer (ph), who was at the NCUA, was over two
9 million. So if the Court wants to -- the Court says
10 we're not revisiting past history here but the
11 difficulty is that anytime you have subsequent
12 proceedings, a defendant can come in and say, wait a
13 second, this sentence that you have is not good in
14 light of what's happened. Why didn't Mr. Vebeliunas
15 and his attorneys, at the time this settlement was
16 entered into, structure it in a way so that -- the
17 restitution was on the table.

18 He could say, look, I haven't paid my
19 restitution yet but clearly fair people would agree
20 that I shouldn't have to pay it twice. Let's structure
21 a settlement so that this eventuality is taken care of.
22 That isn't done. He benefits in a tactical way from
23 just entering the settlement now. Now he comes back to
24 the Court and to us, throws all of this in our face and
25 says, you settle it.

1 My response is that you can try to be a fair
2 person but it is completely unfair for Mr. Vebeliunas
3 to twice benefit from the tactical decision to make
4 certain settlements and not have things litigated, and
5 then to come and throw a bunch of papers at us and say,
6 you get involved in this. Mr. Mehler was not there, he
7 didn't read the file. Why should Mr. Mehler have to
8 read the file?

9 This is a civil proceeding that took place
10 two years later and this case was indicted eight years
11 ago. That's why I hedged my initial response. As a
12 matter of fairness, the answer is he shouldn't have to
13 pay twice. But there's not fairness on the other side
14 here because of what we're being asked to do, and I
15 don't think we can do it absent some incredible hearing
16 that will reveal nuances that neither of us can
17 understand with the cursory knowledge that we have.

18 MR. VEBELIUNAS: I think if I might permit
19 to correct Mr. Mehler. At the time of the trial in the
20 adverse proceedings, the mortgage -- I was incarcerated
21 and I could not appear, nor did I have a lawyer at that
22 time. I had to represent myself. I did bring into the
23 Court of Appeals -- I think I first brought this
24 discrepancy to this Court and then to Court of Appeals
25 that the restitution which was based on Club Regency

1 was first backed by good mortgage, and second, it was
2 paid because of the mortgage. I did all I could.

3 THE COURT: I don't know that it was, I
4 guess. I don't know what happened. I don't have
5 anything solid before me to know that it was paid
6 because of the mortgage. I don't know why this is so
7 incredibly complicated to find out, though. I guess
8 that's what I'm having a problem with. The NCUA is the
9 person that wants the restitution of 580 -- well, to
10 them I guess \$490,830. They want that paid to them,
11 correct?

12 MR. MEHLER: Correct.

13 THE COURT: That's what I ordered. You
14 don't think that they could take the time to bother to
15 enlighten the Court on whether they've already been
16 paid that amount now, when Mr. Vebeliunas makes the
17 claim that they have?

18 MR. MEHLER: Judge, if you want, we can
19 bring Mr. Friedman in here, although from my
20 discussions with Mr. Friedman, he is in the dark on it
21 as I was. We can bring Mr. Meltzer in here, who is the
22 associate general counsel of the NCUA, who apparently
23 is the only person still with them. Nobody knows where
24 Mr. Consenz is. Apparently, he's not even in the state
25 anymore. We can bring him in and have him elucidate

1 it.

2 But it's significant and the Court may
3 recall, although it's understandable -- it's quite a
4 while ago. But in January, when we were briefing this
5 issue, Mr. Vebeliunas relied on a couple of provisions
6 of the U.S. Code now repealed that provided for just
7 this eventuality, sort of set-offs. When you have
8 something paid in a civil settlement, it can be set off
9 against the restitution.

10 But significantly, and the Court mentions
11 this in its opinion, all of that is going forward, as
12 you put it. In other words, you've got a civil
13 settlement. You come in before the judge. The judge
14 doesn't have to relitigate a massive and complex series
15 of subsequent civil litigation. The Court says
16 fairness dictates in the civil settlement there's this;
17 therefore, there is going to be an offset. It was
18 repealed and one can only wonder why, although I have
19 some suspicions because of the complexities we're
20 seeing, but clearly it doesn't work in the other
21 direction and the cases are uniform in that.

22 The reason is very simple: It can't work
23 the other way because of precisely the issue that we're
24 facing. The Court wants to get a quick assessment of
25 what happened but there is no way, based on my

1 discussions with the people involved, to get a quick
2 assessment of what happened.

3 MR. VEBELIUNAS: I think that the Court
4 asked very clearly, did the NCUA receive \$800,000 and
5 did the \$800,000 come from Club Regency? That has been
6 proven and I think through Ms. Divine and she did
7 acknowledge receiving the \$800,000. I can show
8 documents that this money was actually from the Club
9 Regency. I think that could almost satisfy this Court.

10 MR. McFARLAND: A modest proposal, your
11 Honor. I would be happy to undertake to pull out of
12 the bankruptcy files whatever refers to that
13 settlement. That is, the adversary complaint, what was
14 the NCUA seeking and what did the settlement represent?
15 Perhaps that will enlighten us as to what was intended.
16 As I mentioned earlier, my understanding is that the
17 complaint was originally filed for claims in excess of
18 two million dollars, representing a whole host of
19 losses caused by --

20 THE COURT: Other than for Club Regency?

21 MR. McFARLAND: Including, but more than
22 that. Again, I have not seen the stipulation of
23 settlement. My experience tells me that usually those
24 things are a little vague as to --

25 THE COURT: I have the stipulation of

1 settlement.

2 MR. McFARLAND: That might help.

3 THE COURT: Well, let's see.

4 (Pause in Proceedings)

5 THE COURT: Why don't you take -- you've
6 never seen this?

7 MR. McFARLAND: I've never it, your Honor.

8 THE COURT: It might shed some light. Maybe
9 you would understand it better than the Court.

10 MR. MEHLER: That's certainly my
11 understanding as well, that the claims against Mr.
12 Vebeliunas were broad-gauged and, you know, I don't
13 think we can say that it relates, again, as I said
14 before, specifically to the harm that the restitution
15 order addresses. Part of it might; I can't say for
16 certain. But, again, it's a settlement.

17 I have the letter from -- another part of
18 the problem is, your Honor, I've been in Washington for
19 a year. We've had a number of these proceedings and
20 Mr. Vebeliunas knows I'm in Washington. Why do I have
21 to not get the papers and read them the day before.

22 THE COURT: I'm not sure who sent that,
23 where that paper came from.

24 MR. MEHLER: I have in a letter from Mr.
25 Meltzer, again, the individual I referred to before,

1 who seems to have -- yeah, here it is.

2 THE COURT: Mr. McFarland, do you have
3 actually a civil action pending to collect this
4 restitution order?

5 MR. McFARLAND: The collection is done
6 within the context of the criminal case, your Honor.

7 THE COURT: I see. That's the order.

8 MR. McFARLAND: Yeah, that's the order.

9 THE COURT: Okay.

10 MR. McFARLAND: That's the way we do it.

11 THE COURT: All right.

12 MR. MEHLER: Judge, it's just a couple of
13 paragraphs. Let me -- let me read it and then Mr.
14 Vebeliunas will hear it. He writes to Kelly Devine
15 (ph). I assume this was turned over and that he has
16 it, explaining that he's Alan Meltzer, Associate
17 General Counsel of the NCUA.

18 He says CASA (ph), the credit union, was
19 placed into liquidation on August 1st, 1992. The losses
20 suffered by the NCUA as a result -- as the liquidating
21 agent of CASA were substantial. That's losses related
22 not only to Club Regency but Beach Club, WTI, all of
23 the financial depredations that he engaged in.

24 On August 20th, 1993, Lidas International
25 filed a petition for relief under the Bankruptcy Code.

1 The relationships between CASA, Vebeliunas and Lidas
2 International are described in another document. In
3 '95, the NCUA began an adversary proceeding against the
4 trustee. The total amount claimed was 2.2 million
5 dollars, roughly, again for the whole ball of wax,
6 beyond Club Regency. In April '96, a stipulation of
7 settlement was agreed to.

8 THE COURT: Why do you say it's beyond Club
9 Regency?

10 MR. MEHLER: Well, again, because the
11 earlier paragraph refers to the fact that the losses
12 suffered by the NCUA related to its role as the
13 liquidating agent of CASA, the fact that all of these
14 loans involving these straw borrowers impacted on the
15 NCUA. It wasn't just Club Regency.

16 A settlement was entered into for \$800,000
17 and then the final paragraph is as follows:

18 "The \$800,000 was received in settlement of
19 the adversary proceeding against the trustee and not in
20 restitution for Mr. Vebeliunas. The payment did not
21 amount to full compensation to the NCUA, as liquidating
22 agent of CASA."

23 There it is. You can look at it, signed
24 Alan Meltzer, Associate General Counsel.

25 MR. VEBELIUNAS: For your information, Mr.

1 Mehler and your Honor should know that this adversary
2 proceeding that was filed in 1996 is still pending in
3 the court. And on August 19, there will be a status
4 conference before Bankruptcy Judge Buchanan (ph). So
5 whatever they're claiming, it's still outstanding.
6 This settlement, \$800,000, was only brought in by that
7 procedure on the money that was from Club Regency. The
8 balance of the money is still being negotiated.

9 So to answer your Honor's question, the
10 money came from Club Regency. It was paid because they
11 produced the affidavits, they had the mortgage. I had
12 no way of -- there was no stipulation at that time
13 because I was six years out of CASA and I had no way to
14 know what mortgages are good or not, so we had to take
15 the word.

16 THE COURT: But, Mr. Vebeliunas, there are a
17 couple of things here, one of which is that the
18 \$90,000, by your own admission, had nothing to do with
19 this proceeding.

20 MR. VEBELIUNAS: That I understand, yes.

21 THE COURT: So the \$90,000, you can't
22 contest as a part of your restitution order.

23 MR. VEBELIUNAS: I'm talking about Club
24 Regency losses now.

25 THE COURT: So that \$90,000 that the Court

1 ordered in restitution is not the subject of any of the
2 arguments you're making in connection with this
3 bankruptcy, correct?

4 MR. VEBELIUNAS: I understand.

5 THE COURT: So that money is not the subject
6 of dispute. And I think \$124,000 of that amount was
7 paid to the insurance company that insured, I don't
8 know, the NCUA?

9 Who was Cumus (ph)? Do you remember, Mr. --

10 MR. VEBELIUNAS: Your Honor, if they paid
11 for the insurance company, that means -- I don't know
12 if they did but that means that the insurance company
13 paid them before and they just had to reimburse (ui).

14 THE COURT: I don't know.

15 Mr. McFarland, have you had the opportunity
16 to --

17 MR. McFARLAND: I did. It's not 100% clear
18 here, your Honor, what was intended. Perhaps I should
19 consult with the NCUA and discuss it with them because
20 I myself spoke with Mr. Meltzer yesterday, in
21 anticipation of coming in today. He actually told me
22 that he didn't have a copy of the stipulation himself,
23 so perhaps I can send that along to him and we can
24 discuss this and see what the NCUA -- what its position
25 is.

1 THE COURT: I don't think it's an irrational
2 thing to do right now. Looking at the record and
3 particularly reading that settlement agreement would
4 suggest perhaps that the settlement that was reached
5 related to the Club Regency.

6 MR. McFARLAND: I think that's fair to say,
7 your Honor.

8 THE COURT: I don't think that the
9 government can have recovery twice. I mean, I think as
10 a matter of fairness, the government doesn't have
11 recovery twice. And I'd like to --

12 MR. McFARLAND: Usually, we're lucky if we
13 get it once.

14 THE COURT: Yeah, exactly. I mean, the
15 money you get out of this proceeding will be
16 questionable, I guess. But it seems like to me that --
17 and I'm just talking now in terms of the provisions,
18 continuing provisions for supervised release and what
19 ought to be paid and all this.

20 This doesn't in my mind -- again, I have to
21 say this is all subsequent proceedings. It has nothing
22 to do with the validity of the sentence as imposed or
23 the validity of the continuing supervised release.

24 It seems like to me that the \$90,000 is not
25 the subject of any dispute on Mr. Vebeliunas' behalf.

1 I think that perhaps we ought to determine what the
2 \$124,000 is to the insurance company. That was awarded
3 to Cumus Mutual Insurance Company. I don't know
4 whether they get paid back or not from this 800.

5 MR. McFARLAND: That would be something that
6 I would inquire about, your Honor.

7 THE COURT: Yeah. So those are the things
8 that I really want to know, in fairness, the answer to.
9 I mean, there may be a way where, assuming this has all
10 been paid, this particular part of the restitution --

11 MR. McFARLAND: My understanding is that the
12 \$800,000 has been paid, your Honor.

13 THE COURT: Has been paid.

14 MR. McFARLAND: I would be surprised if it
15 had not been paid.

16 THE COURT: Yeah, but the question is, does
17 that cover this particular -- the restitution order was
18 specific, and I could only order restitution on the
19 counts of conviction, so that was a specific amount
20 related to specific counts. This wasn't, you know, an
21 overall compromise saying, for instance, well, you owe
22 this -- that is the amount of restitution that was
23 paid.

24 If it's been paid by somebody else, it seems
25 like maybe ultimately, that down the road would be a

1 collection issue, but why not just -- let's deal with
2 that now as it pertains, for instance, to continuing
3 payments.

4 But any way you look at it, Mr. Vebeliunas,
5 you owe the government a lot of money. You owe
6 \$90,000. There may well be no issue about the
7 \$124,000. I don't know. Plus, there's a \$60,000 fine.
8 So the payments that the probation officer is
9 recommending are certainly not substantial, in light of
10 that undisputed financial obligation that you have.

11 But in fairness, if we can resolve this
12 other thing, I we ought to do it. And I don't think
13 the answer is quite as complicated or may not be as
14 complicated as Mr. Mehler suggested.

15 MR. VEBELIUNAS: How can I be advised about
16 the Social Security pension? The gentleman agreed that
17 this is not subject to --

18 THE COURT: There's a difference, Mr.
19 Vebeliunas, it seems to me, between going after that
20 money. In other words, the government is saying they
21 can't go after your Social Security versus counting it.
22 I mean, it's clearly --

23 MR. VEBELIUNAS: The probation officer comes
24 and says, you paid the --

25 THE COURT: Do you have a case that says

1 that they can't include restitution?

2 MR. VEBELIUNAS: No, I don't.

3 THE COURT: Well, I can't imagine why they
4 can't but, you know --

5 MR. McFARLAND: It's just an economic
6 determination, your Honor.

7 THE COURT: Yeah. It's a determination of
8 the amount of money that you have to work with. What
9 the government is saying is that if you don't pay, they
10 can't then attach your Social Security income and take
11 your Social Security income. But they can certainly
12 consider it in terms of the finances that you have in
13 order to make your payments.

14 There's no reason, rational reason that I
15 can think of that it wouldn't be included among your
16 income to determine what your financial picture was. I
17 can't imagine why it wouldn't be included.

18 MR. VEBELIUNAS: Your Honor --

19 THE COURT: If you have some case that says
20 that the government can't consider that in terms of
21 what your financial picture is, then I'd be happy to
22 consider it.

23 MR. VEBELIUNAS: Your Honor, but this is
24 like (ui) attachment. The probation officer says, if
25 you don't pay the \$500, you're not getting any travel

1 permits. So I have to pay. It's the factor --

2 THE COURT: It has nothing to do with
3 anything. What she's saying is, and appropriately so,
4 that if you've got money to spend on travel, you've got
5 money to pay your fine and you've got money to pay your
6 financial obligation.

7 MR. VEBELIUNAS: Your Honor, the travel is
8 purely business. If I don't travel, I don't make any
9 money, so the government cannot get money. That's why
10 I was asking you if you could, at this juncture, to
11 lift at least the travel restrictions. And at the
12 same --

13 THE COURT: I'm not going to do anything
14 like that without the probation officer here. I did
15 not -- I didn't understand you to be contesting -- is
16 there some paper where you asked previously to be
17 lifted of this restitution? Maybe I don't have it.

18 MR. VEBELIUNAS: At the same breath, I want
19 to thank your Honor for so expediting my trip to
20 Lithuania when my brother died, but that didn't happen
21 again because the probation officer -- there was a man
22 says, no way, you cannot travel. So I wrote to you and
23 of course, the permission came too late for the funeral
24 but --

25 THE COURT: I faxed it to you from the

1 office. I was here on Saturday. I faxed it to your
2 home.

3 MR. VEBELIUNAS: Yes, but I was at home. I
4 thank you for your prompt action but you see, like the
5 travel restriction produces absolutely nothing --

6 THE COURT: You can always go to the
7 probation officer and ask, you know, on a personal
8 issue or something. If you have some problem with the
9 travel restriction -- but I understand the nature of
10 the travel restriction.

11 Mr. McFarland, if you can find out the
12 information with respect to that, I think that would
13 take us a little way towards resolving this. And maybe
14 you can, based on your determinations, reach some
15 resolution independently.

16 The bottom line, Mr. Vebeliunas, is you owe
17 a tremendous amount of money.

18 MR. VEBELIUNAS: But we're talking about
19 Club Regency at this point.

20 THE COURT: No, there's the WTI loan.
21 That's \$90,000 that has nothing to do with Club
22 Regency. There's your fine. That's \$60,000 that has
23 nothing to do with Club Regency. The only thing that
24 we're talking about here in terms of the government's
25 enforcement obligations, in terms of the continuing

1 provisions of supervised release, you know, on how much
2 money you need to pay and what's calculated in
3 connection with that seems to me to be whether this is
4 still money that has to be paid from the government's
5 perspective or whether it's in effect been paid.

6 Mr. McFarland, maybe you can look into that.

7 MR. MCFARLAND: That's what I will do, your
8 Honor.

9 MR. VEBELIUNAS: Your Honor, if you direct
10 the gentleman to copy me on that, so I can respond to
11 their search.

12 THE COURT: They will copy -- anything
13 that's presented to the Court --

14 MR. MCFARLAND: Anything that I submit to
15 the Court, your Honor --

16 THE COURT: -- they will copy --

17 MR. MCFARLAND: -- of course I will provide
18 to the defendant.

19 THE COURT: -- to me.

20 MR. MCFARLAND: May I make a copy of this,
21 your Honor?

22 THE COURT: Sure. I actually don't know.

23 Did you provide that to the Court? I don't
24 remember how that -- the settlement agreement?

25 MR. VEBELIUNAS: I don't remember, your

1 Honor.

2 THE COURT: It must have been in a file
3 somewhere. I don't know who provided it.

4 MR. McFARLAND: The facts --

5 MR. MEHLER: I think we have it, Judge. I
6 have a copy from Mr. Friedman. He sent it to me.

7 THE COURT: Do you have a copy of it?

8 MR. VEBELIUNAS: I think in the files, I
9 must have a copy.

10 THE COURT: All right, then why don't you
11 respond -- when do you think --

12 MR. McFARLAND: If I could have thirty days,
13 your Honor, just in case I have to go to the archives
14 in bankruptcy court over in Manhattan.

15 THE COURT: Okay.

16 MR. McFARLAND: If I can do it more quickly,
17 your Honor, I'll be happy to.

18 THE COURT: If you want an opportunity to
19 respond to his papers on this issue, you can do that.
20 Do you want to do that two weeks after you get his --

21 MR. VEBELIUNAS: How many days do I have?
22 Can I have at least fifteen days or thirty days to
23 respond?

24 THE COURT: Yeah. Why don't you -- you can
25 have two weeks afterwards, fifteen days, whatever you

1 want to respond. And I'll take a look at the papers
2 and see if there's any basis to alter any conditions of
3 supervised release, which is the way I'm looking at
4 this, okay? And if I think we need to have a further
5 hearing to discuss any of this, we'll do it.

6 You know, Mr. McFarland, there may be some
7 resolution you can reach on this.

8 MR. McFARLAND: I understand that, your
9 Honor.

10 THE COURT: Particularly when we consider
11 the viability of getting this money, okay? All right,
12 thank you.

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18 I certify that the foregoing is a correct
19 transcript from the electronic sound recording of the
20 proceedings in the above-entitled matter.
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25 ELIZABETH BARRON

November 26, 2012